

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH

Original Application No. 688 of 2004

Raipur, this the 10th day of May, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Lokeshwar Prasad Chandela
S/o Shri Kandhilal Chandela
Gram Post Master
Gokul Thana
Nainpur
Dist.Mandla (M.P.)

Applicant.

(By advocate Shri M.K. Sanghi)

Versus

1. Union of India through
Secretary
Department of Posts and Telegraph
New Delhi.

2. Director
Indian Postal Services
Chhattisgarh Circle
Raipur (CG).

Respondents.

(By advocate Shri P. Shankaran)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following relief:

- (i) The termination order dated 3.8.04 (Annexure A6) be quashed being illegal and improper.
2. The brief facts of the case are that the applicant was appointed as Gramin Dak Sevak Branch Post Master. The services of the applicant were terminated vide order dated 3.8.2004 for the reason



that his appointment was made under the wrong notification which contained the condition to possess immovable property by the applicant whereas under the notification dated 6.12.2003 the same was not necessary. The impugned order has also not been passed by the appointing authority and is also in contravention of the Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 as no such review can be made by respondent No.2. The appointment of the applicant was in accordance with rule by the competent authority under the valid notification which has not been cancelled or modified so far. The applicant is being harassed unnecessarily. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that the respondent No.2 had published a notification dated 17.1.2002 and invited applications for appointment as Gramin Dak Sevak Branch Post Master in Gokulthana Branch Post Office. The applicant applied for it and as he was found fit, he was selected for the post. The applicant complied with all the directions given by the respondents thereafter. Suddenly the applicant was served with a show cause notice dated 11.5.2004 as to why his services should not be terminated as his appointment was made on a wrong notification. The applicant had submitted his reply on 24.5.2004 and submitted that his appointment was valid and proper. He was served with the impugned order by which his services had been terminated. It is also argued on behalf of the applicant that the applicant had neither concealed nor misrepresented any facts before the respondents. If there is any irregularity in his appointment on account of a wrong notification, the respondents are responsible for it and the applicant is not to be penalized for the said action of the respondents at all. The impugned order dated 3.8.2004 is against rules and law and is liable to be quashed and set aside and the applicant is entitled for the reliefs claimed.

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4. In reply, it is argued on behalf of the respondents that certain terms and conditions had been mentioned in the notification and possession of immovable property in the name of the candidate was mentioned as one of the essential conditions. However, as per DG (Posts)'s letter dated 6.12.93 (Annexure R1), possession of such immovable property was not essential but preference may be given to those having such property. Another condition was that the candidate should have independent source of income, which has not been mentioned in the notification. Since the recruitment process started from the stage of issuing the notification, the notification issued on 17.1.02 was irregular and the selection made on such notification was not in conformity with the instructions. Records of the selection were called for and reviewed by the competent authority. Therefore a show cause notice was issued to the applicant on 11.5.2004 proposing cancellation of the selection and appointment on the post of BPM Gokulthana. The applicant was afforded opportunity to submit a representation in compliance with the principle of natural justice. The applicant submitted his reply to the show cause notice on 24.5.2004 which was duly considered by the competent authority. But because of the irregular selection of applicant which cannot be rectified at any ground being void ab-initio, the competent authority was constrained to cancel his selection and appointment vide order dated 3.8.2004. Hence the action of the respondents is perfectly in accordance with rules. They have not committed any irregularity or illegality. Hence this OA deserves to be dismissed.

5. After hearing the learned counsel for both parties and perusing the records, we find that the applicant was appointed after adopting due selection process by the respondents and he was appointed on the post of G.D.S.Branch Post Master. The applicant submitted all relevant documents along with the proof of independent income. The respondents were satisfied with all the documents and qualification of the applicant. Therefore the applicant was continued on the post. Later

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on, the respondents reviewed the matter and found that the appointment of the applicant was not made in accordance with the notification. The applicant submitted his reply to the show cause notice issued by the respondents and the respondents have terminated his services vide order dated 3.8.2004. The respondents could not show any ground against the applicant by which the applicant could be held responsible for the fact that either he concealed any fact or misrepresented before the respondents before his selection on the said post. If any irregularity is committed in the appointment of the applicant, the respondents alone are responsible for it and the applicant cannot be held liable according to rules and law. It was the duty of the respondents to satisfy themselves that they have complied with all the necessary directions and instructions issued by the department and if they have failed, then the applicant cannot be penalized by passing such impugned order. With regard to the possession of immovable property in the name of the candidate, the Full Bench of the CAT, Bangalore in the case of H.Lakshmana and Ors. Vs. The Supdt. of Post Offices, Bellary and Ors., decided on 2.12.2002 held that "Constitution of India, Articles 14 and 16- Appointment/Selection-Extra Departmental Agents- Appointment/Selection to the post of EDBPM-Possessing of adequate means of livelihood in the circular dated 6.12.1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the aforesaid post."



6. After considering all the facts and circumstances, we are of the considered view that the impugned order dated 3rd August, 2004 is liable to be quashed and set aside and we do so. The OA is allowed. Respondents are directed to reinstate the applicant within a period of one month from the date of receipt of a copy of this order. However, it is made clear that the applicant shall not be eligible for back wages. No costs.



(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman

aa.

प्रतांकन सं. ओ/ब्या..... जबलपुर, दि.....
प्रतिलिपि अयोधिया:-
 (1) सदिक, उच्च न्यायालय द्वारा एकोटिएज, जबलपुर
 (2) आवेदक श्री/श्रीमती/द्वे द्वे कानूनी
 (3) प्रत्यर्थी श्री/श्रीमती/द्वे द्वे व्यक्ति
 (4) चांगपाल, एक.प्रा.अ., जबलपुर एकाउटिं
सूचना एवं आवश्यक कार्यवाही हेतु

M.K. Singh: 02/07/05
P. Khan: 09/07/05
A. R. Rajeshwar: 02/07/05

signed
WZ
18.5.05